

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-1002

United States of America,

Appellee,

v.

Kenneth Alan Dudley,

Appellant.

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Appeal from the United States
District Court for the
Northern District of Iowa.

[UNPUBLISHED]

Submitted: July 16, 2003

Filed: July 21, 2003

Before LOKEN, Chief Judge, MURPHY, and RILEY, Circuit Judges.

PER CURIAM.

Kenneth Dudley pleaded guilty to one count of distributing approximately 31.48 grams of a mixture or substance containing cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B). At sentencing, the district court¹ denied Dudley's motion for downward departure and sentenced him to 57 months imprisonment and 4 years supervised release. The court also ordered Dudley to pay \$3,450 in restitution. On appeal, counsel has moved to withdraw and filed a brief under Anders

¹The HONORABLE LINDA R. READE, United States District Judge for the Northern District of Iowa.

v. California, 386 U.S. 738 (1967), arguing that the district court abused its discretion in denying a downward departure. We reject this argument.

Specifically, we do not review a sentencing court's denial of a downward-departure motion where, as here, there is no indication the court believed it lacked the authority to depart. See United States v. Lopez-Arce, 267 F.3d 775, 783-84 (8th Cir. 2001). Further, we have reviewed the record independently under Penson v. Ohio, 488 U.S. 75, 80 (1988), and we find no nonfrivolous issues.

Accordingly, we grant counsel's motion to withdraw, and we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.